

Remarks/Arguments:

Claim Objections

Claim 21 is objected to for an inconsistency. Applicants respectfully submit that the claim as amended addresses the examiner's concern. Withdrawal of this objection is respectfully requested.

Claim Rejections Under 35 U.S.C. §103

Claims 1-5 and 20-21 stand rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 5,522,899 (Michelson) in view of U.S. Patent No. 5,733,290 (McCue et al.). Applicant respectfully traverses these rejections.

Independent claim 1 recites "[a]n implant insertion device comprising: an insertion rod having a longitudinal axis; and an implant gripper attached to said insertion rod, said implant gripper including: a v-shaped gripping surface intersecting the longitudinal axis of the insertion rod; a first pin extending from and fixed relative to said v-shaped gripping surface; and a second pin extending through and movable relative to said v-shaped gripping surface between a first position wherein the second pin extends from the v-shaped gripping surface a distance x and a second position wherein the second pin extends a distance less than x from the v-shaped gripping surface, wherein said first pin and said second pin are offset on said v-shaped gripping surface and extend in a non-parallel manner."

Similarly, independent claim 20 recites "[a]n implant insertion device comprising: an insertion rod having a longitudinal axis; and an implant gripper extending from said insertion rod, said implant gripper including: an implant gripping surface intersecting the longitudinal axis of the insertion rod; a first pin extending from and fixed relative to said implant gripping surface; and a second pin extending through and movable relative to said implant gripping surface, said second pin being substantially aligned with said longitudinal axis of said insertion rod and non-parallel to said first pin."

Independent claim 21 recites "[a]n implant insertion device comprising: a handle having a gripping surface; an insertion rod extending from said handle, said insertion rod defining a longitudinal axis; an implant gripper extending from said insertion rod, said implant gripper including: an implant gripping surface intersecting the longitudinal axis of the insertion rod; a first pin extending from and fixed relative to said implant gripping surface; and a second pin

extending through and movable relative to said implant gripping surface, said second pin being substantially aligned with said longitudinal axis of said insertion rod and non-parallel to said first pin; and an actuator positioned proximal to said handle for moving the second pin relative to said v-shaped gripping surface."

"To establish a *prima facie* case of obviousness, ... the prior art reference (or references when combined) must teach or suggest all the claim limitations." M.P.E.P. §2143. Additionally, as set forth by the Supreme Court in KSR Int'l Co. v. Teleflex, Inc., No. 04-1350 (U.S. Apr. 30, 2007), it is necessary to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the prior art elements in the manner claimed.

The Office Action acknowledges that Michelson fails to disclose the first and second pins that are offset by an angle of approximately 30 degrees. Without any specific support, the Office Action cites McCue et al. as disclosing first and second pins offset by an angle of approximately 30 degrees. Applicants respectfully submit that McCue et al. does not teach such and instead teaches a series of pins which are all parallel to one another.

Figures 4 and 6 of McCue et al. show three bolts 114 and 136 extending from the flat connecting end of the handle. The bolts 114 and 136 are illustrated as extending parallel to one another. There is no teaching or suggestion anywhere in McCue et al. that these bolts 114, 136 are anything other than parallel to one another. Furthermore, the operation of the device as taught in McCue et al. requires the bolts to be parallel to one another. As explained at column 3, line 56 through column 4, line 14, that the bolts 136 are inserted axially into the holes 128. Since both bolts 136 are fixed, they must be parallel to one another to be able to move axially and engage the spaced apart holes 128. Bolt 114 is then extended axially to lock the position of the bolts 136 after they have been moved sideways to the area of reduced opening. The cited references, alone or in any reasonable combination, fail to teach or suggest first and second pins extending from a gripping surface in a non-parallel manner.

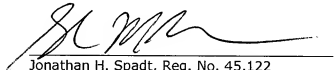
It is respectfully submitted that independent claims 1, 20 and 21 are in condition for allowance. Claims 3-5 all ultimately depend from claim 1 and are therefore allowable for, *inter alia*, the reasons set forth above. Additionally, withdrawn claims 6-19 all ultimately depend from independent claim 1 and should be reinstated and allowed as dependent upon an allowable generic claim.

Conclusion

It is respectfully submitted that each of the pending claims is in condition for allowance. Early reconsideration and allowance of each of the pending claims are respectfully requested.

If the Examiner believes a further interview, either personal or telephonic, will advance the prosecution of this matter, the Examiner is invited to contact the undersigned to arrange the same.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "JH MM", is written over a horizontal line.

Jonathan H. Spadt, Reg. No. 45,122
Glenn M. Massina, Reg. No. 40,081
Attorneys for Applicants

JHS/GMM/mgm

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